

## REMARKS

This paper is filed in response to the Office Action mailed November 24, 2009. It is timely in view of the three month shortened statutory period for response. Applicants request reconsideration in light of the following remarks.

Claims 73-86 are pending in the application. Claim 73 has been amended to describe more clearly the subject matter sought to be claimed. Basis for this amendment may be found in parent patent application Serial No. 09/110,409 (incorporated by reference into the above-captioned patent application at p. 1, l. 1-3) at p. 31, l. 4-17 and p. 33, l. 4 – p. 34, l. 14. No new matter has been added.

Applicants gratefully acknowledge the withdrawal of the previous rejection of claims 73-86 under 35 U.S.C. §103(a) as being unpatentable over Fowler et al. in view of Meybeck et al. and Sessa et al. and Seiberg et al. and Avramiotis et al.

The Office Action of November 24, 2009 contends that priority should not be extended to parent patent application Serial No. 09/110,409 on the ground that “Page 16, line 1-3 alternatively disclose natural extracts which is not the same as ‘non-denatured soybean extract’” while “the support for 09/698,454 is found persuasive.” Applicants respectfully request reconsideration of this determination.

Applicants respectfully point out that antecedent basis for non-denatured soybean extract is found in parent application Serial No. 09/110,409 in the Examples set forth in the Specification as filed at least at p. 31, l. 4-17 and p. 33, l. 4 – p. 34, l. 14. Applicants respectfully submit that these Examples clearly describe soybean extracts that have not been denatured. Therefore, they respectfully request reconsideration of the priority determination.

The Office Action of November 24, 2009 rejected claims 73-86 under 35 U.S.C. 103(a) as being unpatentable over Jin (CN166960A published 12/10/1997) in view of Meybeck et al. (US 5,034,228). The basis for this rejection was given as follows:

Jin teaches a composition comprising soybean protein powder for treating the face, wherein after several application of the mask, the acne is obviously decreased...Because Jin does not heat, etc. his soybean powder, it is therefore considered non-denatured...Inherently, the soy flour/powder will have trypsin-inhibiting activity because “products of identical chemical composition can not have mutually exclusive properties...” Because Jin teaches that the powders of these natural products are mixed, it is reasonable to conclude that the mixing involves the use of water, and therefore the powder will form a paste when in contact with a liquid

or a solvent. Thus it is reasonable to conclude that Jin teaches soybean paste as well...However, *Jin fails to teach the composition for reducing/treating acne further comprises tretinoin*. Meybeck et al. teach treating acne with soya lecithin and tretinoin...wherein the application is topical...One of ordinary skill in the art would have been motivated to expand the treatment composition taught by Jin to incorporate Meybeck's treatment method by substituting the soy lecithin (soybean extract) in Meybeck with the soybean powder/flour of Jin because Jin teaches that when soybean flour is applied to the face, it diminishes acne considerably...[Office Action, pp. 4-5] (emphasis added)

Applicants respectfully request reconsideration of the foregoing rejection in view of the ensuing remarks.

CN 1166960 (hereinafter referred to as "Jin", a full translation of which is attached hereto, relates to a "complex spirulina beauty masque powder" [Jin, p. 3] which contains the following materials:

The raw materials presented in the present invention are comprised of 20 to 40 grams of spirulina, 8 to 30 grams of pearl powder, 20 to 40 grams of pure pollen, 10 to 30 grams of mung bean flour, 5 to 12 grams of *soy protein isolate powder*, 8 to 12 grams of powdered silkworm larvae, 6 to 15 grams of bleitilla tuber powder and 6 to 15 grams of talcum powder. [Jin, translation, p. 3] (emphasis added)

Applicants respectfully submit that Jin would not have suggested or described the compositions or methods of applicants' invention to one of ordinary skill in the art at the time the invention was made.

First, the compositions set forth in Jin indicate the presence of "soy protein isolate powder" as set forth above. Such powder would constitute only a small proportion of the powder described by Jin: at the most, it would constitute approximately 2 to 5% of the powder composition. Furthermore, while the Office Action is correct in indicating that Jin does not refer to heating steps *after* addition of the powder to the composition that would tend to denature the proteins contained therein, *nowhere* does Jin indicate that the soybean protein isolate powder *was not processed prior* to addition to the composition. Applicants respectfully conclude that one of ordinary skill in the art would rely upon the ordinary interpretation of the term "soy protein isolate powder" used at the time.

In reviewing literature prior to the Jin publication, it appears that soy protein isolate powder was known to be used as feed for animals and humans. Soybean-derived materials

that are acceptable for use for oral ingestion must be denatured in order to eliminate the presence of soy trypsin inhibitor. The presence of soy trypsin inhibitor in nutritional materials would cause serious gastrointestinal side effects to the individual ingesting such materials. As set forth in the attached Declaration of Miri Seiberg, several publications relating to soy protein powder indicate that the powder was used as an orally-ingested feed material. [See Declaration of Miri Seiberg, attached hereto, ¶2]. A literature search carried out in connection with soy protein powder did not uncover *any* publications that referred to soy protein powder outside the context of nutritional materials. [Declaration of Miri Seiberg, ¶1]. Thus, applicants respectfully submit that one of ordinary skill in the art, reading Jin, would not have learned to utilize soybean extracts containing soy trypsin inhibitor.

Nor would Meybeck et al. contribute to the information set forth in Jin that would have led one of ordinary skill in the art toward the compositions and methods of applicants' invention. As was noted in applicants' earlier responses, Meybeck et al. would have taught one of ordinary skill in the art *away* from the compositions and methods of applicants' invention. The Meybeck et al. patent relates to "hydrous lipidic lamellar phases or liposomes containing, as an active agent, a retinoid or a structural analogue of retinoid... These compositions are more efficient against acne and less irritant for the skin..." [Meybeck, et al., Abstract]. "Hydrogenated soya lecithin" [Meybeck, et al., col. 8, l. 2] is mentioned as one of the components of a composition for treating acne skin. However, applicants respectfully assert that Meybeck et al. neither suggests nor describes the compositions or methods of applicants' invention.

Meybeck et al. utilizes lecithin in the liposomes described therein to form the lipidic layer portion of the liposomes. Soybeans have a multitude of components, which can be separated out from the natural beans in several ways. Generally, lecithin is removed from the soybeans using organic solvents—these solvents solubilize the lipidic lecithin molecules and separate them from the remainder of the beans. Soy trypsin inhibitor proteins, like other proteins, are not soluble in organic solvents. Moreover, organic solvents tend to denature proteins. Meybeck et al. nowhere states or suggests that the soya lecithin useful in the liposomes described therein should be processed so as to maintain soy trypsin inhibitory activity nor does it recognize that soy trypsin inhibitory activity is important in enhancing the

Serial No. 10/659,598

activity of retinoids against acne. Applicants therefore respectfully submit that Meybeck et al., alone or in combination with Jin, would not have led one of ordinary skill in the art to the compositions and/or methods of applicants' invention.

In view of the foregoing, applicants respectfully request reconsideration of the rejection of claims 73-86 under 35 U.S.C. 103(a) as being unpatentable over Jin (CN166960A published 12/10/1997) in view of Meybeck et al. (US 5,034,228). An early allowance is earnestly solicited.

Respectfully submitted,

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